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BEFORE THE

Supreme Court of the United States

October Term, 1943

No. 377

NATHAN GOLDSMITH and THE MANHATTAN COFFEE
& SUGAR COMPANY, INC.

Petitioners, and Appellants below,

v.

UNITED STATES OF AMERICA,

Respondent, and Appellee below.

PETITION FOR REHEARING ON A PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT.

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INDEX

| | PAGE |
|---|------|
| Petition for Rehearing on a Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit..... | 1 |
| Jurisdiction | 1 |
| Reasons for Petition for Rehearing..... | 2 |
| Conclusion | 6 |

TABLE OF CASES CITED

| | |
|---|------|
| Dows v. National Exchange Bank, 91 U. S. 618..... | 3, 5 |
| Gibson v. Stevens, 49 U. S. 384..... | 3, 6 |
| Halliday v. Hamilton, 78 U. S. 560, 564..... | 3, 6 |
| Prussian v. U. S., 51 S. Ct. 223, 282 U. S. 675, 75 L. Ed. 610 (aff 42 F. (2d) 854)..... | 3 |
| U. S. v. Fruit Growers' Express Co., 49 S. Ct. 374, 279 U. S. 363, 73 L. Ed. 739..... | 3 |
| Vierick v. U. S., 63 S. Ct. Rep. Adv. 561..... | 4 |



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CIRCUIT.**

*To the Honorable Chief Justice, and the Associate
Justices of the Supreme Court of the United States:*

Comes now the petitioners and present this petition for
a rehearing on the petition for a writ of certiorari filed
in this case.

JURISDICTION

The petition for certiorari was filed on September 24,
1943, and denied on November 8, 1943. This petition
for rehearing is filed within twenty-five days from No-
vember 8, 1943, in accordance with Rule 33 of this Court.

REASONS FOR PETITION FOR REHEARING

In applying for this rehearing, your petitioners reiterate each and every ground set forth in the original petition, and further suggest to the Court the matters hereinafter discussed.

The brief for the United States filed in this cause predicates the conviction of the petitioners primarily upon the grounds that the Office of Price Administration has issued regulations requiring sugar which was not owned but which had been bought for future delivery to be reported as "now owned." On page 10 of the brief of the United States Section 1407.104 of this regulation is quoted as follows:

"Present Inventory.—The Present inventory of a registering unit is the aggregate of all sugar in the possession of, or intended to be used by, the registering unit, to which, at the time of registration, the owner of the registering unit has title or holds documents of title, or which was in transit or stored for delivery to the registering unit and out of the possession of the vendor of the registering unit prior to April 28, 1942. The owner shall be deemed to have title to sugar regardless of the fact that it may have been mortgaged, pledged, or otherwise used as security in a credit transaction, or that its use may have been prohibited by any order of the War Production Board."

The petitioners earnestly contend that the question of whether Petitioner Goldsmith was guilty of willfully and knowingly making a false statement must depend solely upon the question of whether there were false answers made in the application of the registering unit.

As an analagous situation, it is believed the rule the courts apply to the construction of criminal statutes should have application in this case. The question is not whether the petitioners violated the regulation quoted and relied upon by the United States, but whether Petitioner Gold-

smith willfully and knowingly made a false answer in the registration application. In plain words, the petitioners assert that only the registration application blanks should be examined to determine the guilt of the petitioners. This would undoubtedly be the rule were you construing a criminal statute. This Court has held that criminal statutes must be strictly construed:

Prussian v. U. S., 51 S. Ct. 223, 282 U. S. 675, 75 L. Ed. 610 (aff 42 F. (2d) 854).

U. S. v. Fruit Growers' Express Co., 49 S. Ct. 374, 279 U. S. 363, 73 L. Ed. 739.

If the rule of a strict construction is applied to the applications signed by the petitioners, it will be readily seen that the evidence is wholly insufficient to show that the Petitioner Goldsmith willfully and knowingly made a false statement. It is only when the regulation is considered that any semblance of a crime is shown. The question asked was pertinent to the sugar "now owned" by the registering unit. Under the decisions of this Honorable Court in the cases of

Dows v. National Exchange Bank, 91 U. S. 618.

Gibson v. Stevens, 49 U. S. 384.

Halliday v. Hamilton, 78 U. S. 560, 564.

the petitioners did not "now own" the sugar which the government contended should have been reported. They did not own the sugar under the decisions of the State of New York as set forth in the original petition herein. The regulation of the Office of Price Administration places a meaning on the words "now owned" not found in the standard dictionaries or in the decisions of the courts, as has been previously pointed out. In this connection, the intention of this Honorable Court is directed to the fact that there is no evidence showing that the Petitioner Goldsmith had any knowledge of the existence of the regulation

in question and he specifically denied that he had any knowledge. There is no evidence whatever showing that he willfully and knowingly made a false statement. The statement he made was literally true, when the application which was signed is considered alone. No notice was given to him that the Office of Price Administration had changed the definition of the words "now ~~opened~~^{owned}," and nowhere in the application blank was the Petitioner Goldsmith required to report sugar on option for future delivery. The Office of Price Administration issued a regulation in effect defining the words "now owned" as applying to future periods of time as well as the present. It is respectfully submitted that they could not change the meaning of the words "now owned" by the simple process of issuing a regulation, any more than they could make "a tomorrow a today" by regulation.

In addition to the authorities cited in the original petition, the petitioners earnestly implore this Honorable Court to reconsider this case in the light of the opinion of this Court in the case of *Vierick v. United States*, decided on March 1, 1943, 63 S. Ct. Rep. Adv. 561. In the *Vierick* case, this Court said:

"Penal sanctions attach here for willful failure to file a statement when required, or if the registrant 'willfully omits to state any material fact required to be stated.' Unless the statute fairly read, demands the disclosure of the information which petitioner failed to give, he cannot be subject to the statutory penalties."

If there was any crime committed it was the act of the petitioner, Goldsmith, in answering the registration blanks. It seems to counsel for the petitioners that the language of the *Vierick* case is particularly applicable. Change the word "statute" to "registration blanks" and you have the following:

Unless the *registration blanks* fairly read, demands the disclosure of the information which the petitioner

failed to give, he cannot be subject to the statutory penalties.

The alleged false answer related to the sugar "now owned" by the registering unit. That question was truthfully answered by the petitioners. The regulation relied upon by the United States to convict the petitioners required the petitioner, Goldsmith, to furnish more information than was asked for in the application blanks used for registration purposes. In fact, the regulation requires him to furnish information not asked for in the registration blanks. In this respect, the facts are clearly within the ruling of this Honorable Court in the Vierick case, *supra*. For that reason alone, this petition should be granted.

How can the petitioner, Goldsmith, be convicted of willfully and knowingly making a false statement when he had no knowledge of any regulation requiring him to report more information than was required under the registration blanks, and which enlarged the meaning of words as they are ordinarily understood to mean in the English language? How can the petitioner, Goldsmith, be convicted of a crime of willfully and knowingly making a false statement when he applied the same meaning to words used in the registration blanks as this Court did in cases involving the same question of ownership? It is respectfully submitted that the petitioner, Goldsmith, had a right to rely upon the advice of his counsel, and the decisions of this Honorable Court under a state of facts similar to the situation in which he found himself. The facts of this case are almost identical with the facts in the case of *Dows v. National Bank*, 91 U. S. 618, and this Court in the administration of justice should see that an innocent man is fully protected.

A great and a grave injustice has been done to the petitioners, and this Court, in view of its previous decisions in the *Dows v. National Exchange Bank*, 91 U. S. 618,

Gibson v. Stevens, 49 U. S. 384, *Halliday v. Hamilton*, 78 U. S. 560, 564, and *Vierick v. United States*, *supra*, should grant the writ of certiorari and thus prevent a miscarriage of justice.

CONCLUSION

For the foregoing reasons, the petitioners respectfully urge that a rehearing be granted; that upon further consideration that the order of November 8, 1943, denying the petition for certiorari be revoked, and that the writ of certiorari issue.

C. L. DAWSON

MELVIN D. HILDRETH

Attorneys for the Petitioners.

I, C. L. DAWSON, of counsel, for the petitioners, Nathan Goldsmith and The Manhattan Coffee & Sugar Company, Inc., do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for the purpose of delay.

C. L. DAWSON

Attorney for the petitioner.

End.

